

INDIANA UTILITY REGULATORY COMMISSION

Final Rulemaking

IURC RM #07-08

LSA #07-830(F)

ORIGINAL

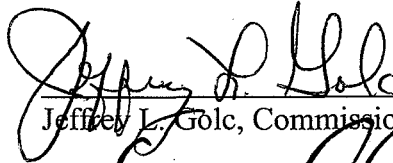
Amending 170 IAC 14-1-1 Through 170 IAC 14-1-6
to Update the Small Utility Rule and Clarify Specified Timelines,
and Adding 170 IAC 14-1-7 Concerning Applicability of Ex Parte Rules.

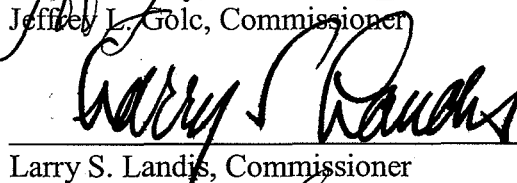
Upon prior publication of notice and a public hearing held on March 6, 2008, at 9:30 a.m., E.S.T. (local time) in Judicial Courtroom 224 of the National City Center, 101 W. Washington Street, Indianapolis, Indiana, as required by the provisions of I.C. 4-22-2-1, *et seq.*, the Indiana Utility Regulatory Commission, on March 26, 2008, at 2:00 p.m. E.D.T. in Judicial Courtroom 222, National City Center, Indianapolis, Indiana at which time a majority of members of said Commission were present, adopted the foregoing rule.

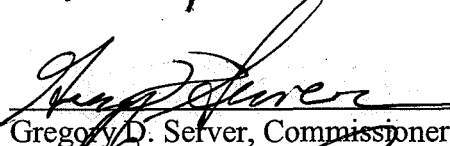
The Secretary is hereby directed to submit the aforesaid rule to the Attorney General and Governor of Indiana, for their approval of same, and thereafter to submit the aforesaid rule to the publisher, Indiana Register.

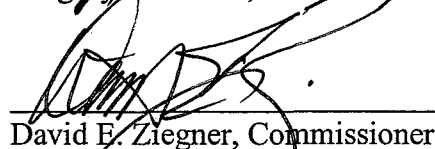
ABSENT

David Lott Hardy, Chairman

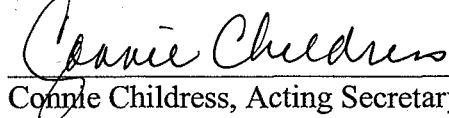

Jeffrey L. Golc, Commissioner


Larry S. Landis, Commissioner


Gregory D. Server, Commissioner


David E. Ziegner, Commissioner

ATTEST:


Connie Childress, Acting Secretary to the Commission

Date: MAR 26 2008

Rule Signature Page

Rule #: LSA #07-830(F)
Agency: Indiana Utility Regulatory Commission
Subject: Amendment to 170 IAC 14-1-1 Through 170 IAC 14-1-6 to Update the Small Utility Rule and Clarify Specified Timelines and Addition of 170 IAC 14-1-7 Concerning Applicability of Ex Parte Rules.

ADOPTED:

By the Indiana Utility Regulatory Commission

Date: MAR 26 2008

ABSENT

David Lott Hardy, Chairman

Jeffrey L. Gole, Commissioner

Larry S. Landis, Commissioner

Gregory D. Server, Commissioner

David E. Ziegner, Commissioner

APPROVED AS TO FORM AND LEGALITY:

By: _____ Date: _____
Stephen Carter
Attorney General, State of Indiana

APPROVED:

By: _____ Date: _____
Mitchell E. Daniels, Jr.
Governor, State of Indiana

ACCEPTED FOR FILING:

By: _____ Date: _____
Indiana Register
Legislative Services Agency

**TITLE 170 INDIANA UTILITY REGULATORY
COMMISSION**

Proposed Rule
LSA Document #07-830(F)

DIGEST

Amends 170 IAC 14-1-1 through 170 IAC 14-1-6 to update the rule and clarify specified timelines. Adds 170 IAC 14-1-7 concerning applicability of ex parte rules. Effective 30 days after filing with the Publisher.

170 IAC 14-1-1
170 IAC 14-1-2
170 IAC 14-1-3
170 IAC 14-1-4
170 IAC 14-1-5
170 IAC 14-1-6
170 IAC 14-1-7

SECTION 1. 170 IAC 14-1-1 IS AMENDED TO READ AS FOLLOWS:

Rule 1. Rate Changes and Financing Approval

170 IAC 14-1-1 Definitions

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61

Sec. 1. ~~(a) As used in this rule, "commission" means the Indiana utility regulatory commission.~~

~~(b) As used in this rule, "small utility" means a utility subject to the jurisdiction of the commission, with fewer than five thousand (5,000) customers as of the date any application for rate change is filed.~~

~~The small utility must be one (1) of the following types:~~

- ~~(1) A not for profit water utility.~~
- ~~(2) A private rural water and sewer utility.~~
- ~~(3) A private rural water utility.~~
- ~~(4) An investor owned water utility.~~
- ~~(5) An investor owned gas utility.~~
- ~~(6) A municipal utility.~~
- ~~(7) An investor owned local exchange carrier telephone company.~~
- ~~(8) A distribution cooperative.~~

~~(c) As used in (a) The definitions in this section apply throughout this rule.~~

~~(b) "Application for rate change" means an application, filed with the commission by a utility in accordance with section 2 of this rule, which that:~~

- ~~(1) functions as a petition or in support of a petition for rate change; and~~

(2) may include a financing authority request.

(c) "Commission" means the Indiana utility regulatory commission.

(d) "Customer" means any person, firm, corporation, municipality, or other government agency that has agreed, orally or otherwise, to pay for service received from a small utility, provided that, for the purposes of this rule, any customer as defined in this subsection who:

(1) has more than one (1) connection; and

(2) is rendered an individual bill for each such connection;

shall be counted as one (1) customer for each connection.

~~(d) As used in this rule,~~ (e) "Incomplete application" means an application filed under section 2 of this rule in which either one (1) or more of the elements specified is missing or incomplete. Any blanks not filled in or any interrogatories not answered in the form prescribed under section 2(a)(3) of this rule constitutes an incomplete element and therefore an incomplete application.

(f) "OUCC" means the Indiana office of utility consumer counselor.

(g) "Request for a formal public hearing" means:

(1) a written statement that a formal public hearing is wanted;

(2) filed with the secretary of the commission; and

(3) signed by those making the request who meet at least one (1) of the following standing requirements:

(A) A public or municipal corporation.

(B) Ten (10) individuals, firms, corporations, or associations.

(C) Ten (10) complainants of all or any of these classes affected by the proposed rate change.

(D) the OUCC.

(h) "Small utility" means any public or municipally owned utility subject to the jurisdiction of the commission that:

(1) serves less than five thousand (5,000) customers as of the date any application for rate change is filed;

(2) primarily provides retail service to customers; and

(3) does not serve extensively another utility.

~~(e) As used in this rule,~~ (i) "Small utility rate change application form" means that current set of forms, schedules, blanks, and instructions generated by the commission and made available to those who would petition for a rate change under section 2 of this rule. The **commission** staff shall develop the set of forms, schedules, blanks, and instructions ~~which that~~ comprise the small utility rate change application form. ~~Such form will~~ **The forms may** be revised from time to time as circumstances dictate. Furthermore, **commission** staff may periodically establish and publish generic rates of return for each **type** of the utility ~~types specified under subsection (b)~~ to be used by utilities when submitting a small utility application form.

~~(f) As used in this rule, "request for formal public hearing" means a written statement that a hearing is wanted. The request shall be filed with the secretary of the commission and be signed by those making the request.~~

~~(g) As used in this rule, "customer" means any person, firm, corporation, municipality, or other government agency which receives service from a small utility; provided, that for the purposes of this rule, any customer as defined in this subsection who has more than one (1)~~

~~connection and is rendered an individual bill for each such connection shall be counted as one (1) customer for each connection. (Indiana Utility Regulatory Commission; 170 IAC 14-1-1; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2918; errata, 10 IR 254; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1945; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)~~

SECTION 2. 170 IAC 14-1-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-2 Application for rate change

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61.5

Sec. 2. (a) Any small utility availing itself of this procedure must:

(1) file an original and ~~eight (8)~~ **five (5)** copies of an application for rate change with the secretary of the commission; and

(2) contemporaneously serve a copy of ~~such the~~ application on the ~~office of the utility consumer counselor OUCC.~~

(b) The application must include the following:

(1) A copy of the proposed notice required in subsection ~~(b)(1)~~ **(d)(1)** exclusive of the date specified in subsection ~~(b)(1)(A)~~ **(d)(3)(A)**. Proof of publication of the actual notice required in subsection ~~(b)(1)~~ **(d)(1)** must be filed within fifteen (15) days after the filing of the application for rate change.

(2) A copy of the proposed written notice required in subsection ~~(b)(2)~~ **(d)(2)** exclusive of the date specified in subsection ~~(b)(2)(A)~~ **(d)(3)(A)**. An actual copy of the notice required in subsection ~~(b)(2)~~ **(d)(2)** must be filed within fifteen (15) days after the filing of the application for rate change.

(3) A complete small utility rate change application form in its current version, which form is available from the ~~Rates Division, Indiana Utility Regulatory~~ commission 302 West Washington Street, Room E306, Indianapolis, Indiana 46204.

(4) A copy of the resolution or ordinance of the utility's governing body that authorizes the application for rate change.

~~(5)~~ **(c) If the small utility is a not-for-profit water or sewer utility, the application must also include the following:**

(1) A verified statement by a responsible officer or manager of the small utility as to whether or not the small utility has an outstanding indebtedness to the federal government. ~~if the small utility is a not for profit water utility, conservancy district water utility, or municipal utility.~~

~~(6)~~ **(2)** Written consent from any agency of the federal government that is a creditor of the small utility that the utility may obtain an order affecting its rates without a formal public hearing. ~~if the small utility is a not for profit water utility, conservancy district water utility, or municipal utility.~~

~~(b)~~ **(d)** Notice requirements for this procedure comprise the following:

(1) Publication of a notice of filing of the application for rate change, ~~no~~ **not** later than ten (10) days after the filing of the application for rate change in a newspaper of general circulation in any and all counties in which the utility renders service. ~~which notice will advise the public of the following:~~

~~(A) The date the application for rate change was filed with the utility regulatory commission.~~

~~(B) The statement that the utility has filed its application for rate change under IC 8-1-2-61.5 without the necessary costs of a utility regulatory commission hearing; however, a public hearing by the utility regulatory commission may be held if any public or municipal corporation, ten (10) individuals, firms, corporations, or associations, or ten (10) complainants of all or any of these classes affected by the proposed rate change or the utility consumer counselor requests a formal public hearing by filing a written signed request with the Secretary, Utility Regulatory Commission, 302 West Washington Street, Room E306, Indianapolis, Indiana 46204.~~

~~(C) The overall approximate percentage increase in revenues requested by the utility. Furthermore, if the proposed increase is other than an across-the-board increase, then the approximate percentage increase to each class of customers must be described along with any other information that fairly summarizes the nature and extent of the proposed changes.~~

~~(D) The written request in clause (B) must be received by the utility regulatory commission within forty (40) days of the date the application for rate change was filed with the utility regulatory commission.~~

~~(E) The statement that there likely will be no hearing in the absence of a written request.~~

(2) Provision of written notice of the application for rate change to each customer no later than ten (10) days after the filing of the application for rate change. ~~which notice will advise the customers of the following:~~

(3) Both the publication of notice under subdivision (1) and the written notice under subdivision (2) shall contain the following:

~~(A) The date the application for rate change was filed with the utility regulatory commission.~~

~~(B) The statement that the utility has filed its application for rate change under IC 8-1-2-61.5 without the necessary costs of a utility regulatory commission hearing; however, a formal public hearing by the utility regulatory commission may be held if: any~~

~~(i) a public or municipal corporation;~~

~~(ii) ten (10) individuals, firms, corporations, or associations; or~~

~~(iii) ten (10) complainants of all or any of these classes affected by the proposed rate change; or~~

~~(iv) the utility consumer counselor OUC;~~

requests a formal public hearing by filing a written signed request with the secretary Utility Regulatory of the commission. 302 West Washington Street, Room E306, Indianapolis, Indiana 46204. Written requests for a formal public hearing must be received by the commission within forty (40) days of the date the application for rate change was filed with the commission.

~~(C) The overall approximate percentage increase in revenues requested by the utility. Furthermore, if the proposed increase is other than an across-the-board increase, then the approximate percentage increase to each class of customers~~

must be described along with any other information that fairly summarizes the nature and extent of the proposed change.

~~(D) The written request in clause (B) must be received by the utility regulatory commission within forty (40) days of the date the application for rate change was filed with the utility regulatory commission.~~

~~(E) (D)~~ The statement that there likely will be no hearing in the absence of a written request.

(E) If applicable, the amount of financing authority sought by the utility.

(F) The full name and current address and contact information for the commission.

(Indiana Utility Regulatory Commission; 170 IAC 14-1-2; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2918; errata, 10 IR 254; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1946; filed Jan 5, 2000, 3:52 p.m.: 23 IR 1091; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)

SECTION 3. 170 IAC 14-1-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-3 Incomplete applications

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61

Sec. 3. (a) In the event the initial application for rate change is an incomplete application, the ~~staff of the commission staff~~ shall file, within ~~fifteen (15)~~ **twenty (20)** days of the date of the filing of the initial application, a report with the secretary of the commission. ~~Said~~ **The** report shall specify which elements of the application are missing or incomplete.

(b) In the event the initial application for rate change is deemed an incomplete application under subsection (a), the ninety (90) calendar days timeframes specified under:

(1) section 4(a) of this rule; and the forty (40) calendar days specified under

(2) section 5(a) of this rule; and

(3) section 6(b) of this rule;

shall not be counted from the date an incomplete application was originally filed, but shall be counted from the date **the commission staff files a report with the secretary of the commission stating that the small utility corrects has corrected** the deficiencies specified in the staff report filed under subsection (a) **and is otherwise complete.**

(c) The commission may dismiss without prejudice any incomplete application which remains on file more than ninety (90) days. *(Indiana Utility Regulatory Commission; 170 IAC 14-1-3; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2919; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1947; errata filed Sep 9, 1991, 10:45 a.m.: 15 IR 10; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA)*

SECTION 4. 170 IAC 14-1-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-4 Review and report on application for rate change; request to file written response

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61

Sec. 4. (a) ~~The utility consumer counselor~~ **OUC** staff ~~will~~ **shall** review the application for rate change and, **subject to section 3(b) of this rule**, shall within ninety (90) calendar days after the filing of a complete application or substantive amendment to ~~such the~~ application file a report with the secretary of the commission on the application making such recommendations as the ~~utility consumer counselor~~ **OUC** deems appropriate. By order of the commission, ~~such the~~ time for filing of the report may be extended if so requested by the ~~office of the utility consumer counselor~~. **OUC**.

(b) ~~If the small utility may request leave to file~~ **intends to submit** a written response to the ~~utility consumer counselor~~ **OUC** staff report, ~~required in subsection (a)~~. ~~Such request the~~ **small utility shall file a notice of its intention** in writing and filed with the secretary of the commission ~~no~~ **not** later than fifteen (15) days following the date that the ~~utility consumer counselor's~~ **OUC** staff report was filed.

(c) **If the small utility notice is filed under subsection (b), the small utility shall file its written response to the OUC staff report within thirty (30) days of the date the notice is filed.** (*Indiana Utility Regulatory Commission; 170 IAC 14-1-4; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2920; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1947; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

SECTION 5. 170 IAC 14-1-5 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-5 Hearing on application

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5

Affected: IC 8-1-2-61

Sec. 5. (a) **Subject to section 3(b) of this rule**, a request for formal public hearing on an application for rate change filed under this rule shall be filed with the secretary of the commission within forty (40) calendar days of the initial filing of the application for rate change, unless the commission extends the period for filing.

(b) The commission may, upon a request timely filed by any public or municipal corporation, ten (10) individuals, firms, corporations, or associations, or ten (10) complainants of all, or any, of these classes affected by the proposed rate change or by the ~~utility consumer counselor~~, **OUC**, conduct a formal public hearing with respect to any application for rate change.

(c) The commission may require a formal public hearing on its own motion.

(d) In the event a formal public hearing is held, under this section, the small utility may elect to designate its application to serve as its prefiled evidence, constituting its case-in-chief; however, the small utility is not precluded from filing additional evidence. (*Indiana Utility Regulatory Commission; 170 IAC 14-1-5; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2920; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1947; filed Jan 5, 2000, 3:52 p.m.: 23 IR 1092; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

SECTION 6. 170 IAC 14-1-6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 14-1-6 Decision on application

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5
Affected: IC 8-1-2-61

Sec. 6. (a) If no ~~formal~~ hearing is held, the commission may issue an order on the application for rate change based on the data in the application for rate change, the report filed by the ~~utility consumer counselor's~~ OUCC staff concerning the application for rate change, and any written response of the small utility to the ~~utility consumer counselor's~~ OUCC staff report.

(b) **Subject to section 3(b) of this rule**, the commission shall not enter an order under this procedure until **at least** forty (40) calendar days have elapsed from the date of the initial filing of the application for rate change. (*Indiana Utility Regulatory Commission; 170 IAC 14-1-6; filed Jul 11, 1986, 9:47 a.m.: 9 IR 2920; filed Jun 19, 1991, 3:45 p.m.: 14 IR 1948; filed Jan 5, 2000, 3:52 p.m.: 23 IR 1092; readopted filed Jul 11, 2001, 4:30 p.m.: 24 IR 4233; readopted filed Apr 24, 2007, 8:21 a.m.: 20070509-IR-170070147RFA*)

SECTION 7. 170 IAC 14-1-7 IS ADDED TO READ AS FOLLOWS:

170 IAC 14-1-7 Applicability of ex parte rules

Authority: IC 8-1-1-3; IC 8-1-2-4; IC 8-1-2-61.5
Affected: IC 8-1-1-5; IC 8-1-2-61

Sec. 7. Under 170 IAC 1-1.5-1(c)(3), filings under this rule are exempt from the ex parte rules of the commission. However, if a formal public hearing is scheduled under IC 8-1-2-61.5(b), then the ex parte rules of the commission located in 170 IAC 1-1.5 apply from the date the hearing is noticed, except 170 IAC 1-1.5-5 regarding prior communications. (*Indiana Utility Regulatory Commission; 170 IAC 14-1-7*)